THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/04/2003

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

Criminal Original Petition No.212 of 2003

1. P.Deeptha

2. Minor P.Prashant, rep.
by Father & Natural
Guardian D.Prabhakar .. Petitioners

-Vs-

V.S.Chandrasekaran .. Respondent

Petition filed under Section 482 of the Criminal Procedure Code,
praying for the relief as stated therein.

!For petitioners: Mr.Srinath Sridevan

^For respondent : Mr.K.S.Vasan for
Mr.N.Ishtiah Ahamed

:O R D E R
This petition has been filed praying to call for the records
in C. C.No.852 of 2002 on the file of the Court of Judicial Magistrate No.
I, Coimbatore and quash the same, insofar as the petitioners are concerned.

2. The averments of the petition are that the first
petitioner is the sister and the second petitioner is her minor brother; that
her father and mother were running a Partnership firm under the name and style
of 'Sreevari Engineering Traders'; that both the petitioners have admitted the
benefits of the aforesaid partnership; that it appears that her father gave a
cheque to the respondent herein drawn on The Karur Vysya Bank, Oppanakkara
Street, Coimbatore in the year 1998, which was a blank cheque given by way of
security and not towards the discharge of any lawful debt or obligation; that
the cheque was drawn by the Partnership Firm, represented by her father; that
after 2000, her father did not operate the account any more and the account
became unused.

3. The petitioners would further submit that all of a sudden,
in the year 2002, the respondent herein appears to have filled up a fictitious
date in the cheque and presented it for collection; that since the transaction

for which the said cheque was given as security had already been satisfactorily closed, her father did not bother to check the account, and therefore, the cheque was dishonoured; that the respondent herein issued a notice in this regard on 6.9.2002 and reply was sent by the petitioners on 15.9.2002; that during the first week of December 2002, the petitioners herein received summons in C.C.No.8

5 2/2002, which was launched against them under Section 138 of the Negotiable Instruments Act by the respondent herein before the Court of Judicial Magistrate No.1, Coimbatore and the first hearing was fixed on 6.1.2003. On such averments, the petitioners would seek for the relief extracted supra on the following grounds:-

(a) that the cheque in question was issued when both the petitioners were minors; (b) that u/s.10 of the Indian Contract Act, 1872, a contract by or against the minor is void and unenforceable; (c) that the proceedings u/s.138 of the Negotiable Instruments Act are not the proceedings under the IPC, stricto sensu and that they are the proceedings under the special enactment; (d) that such a contract can never be enforceable against the minors and therefore, it is totally void, without jurisdiction and void ab initio; and (e) that the cheque has been issued only as security and not for the discharge of any lawful debt or obligation, and therefore, the proceedings u/s. 13 8 of the Act are not maintainable.

4. In the counter affidavit filed on behalf of the respondent, it would be submitted that he filed a complaint against M/s.Sreevari Engineering Traders in which the petitioners, along with their father and mother, are the partners; that as required by law, he had to implead all the partners of the first accused firm, who are fully aware of the entire transactions and the business of the firm; that in his complaint, he has stated that he is the close friend of the accused family; that one C.Nanjappan is also aware of the entire transaction and the fact of the cheque bearing No.556194 dated 28.8.2002 for Rs.4

,90,000/= having been issued on behalf of all the accused; that the examination of the said witnesses during trial will enlighten the Court about the liability of all the accused, but without facing the trial, the petitioners have approached this Court; that even according to the petitioners' affidavit, they are fully aware of the day-to-day affairs of the firm; that while the petitioners are making averments that a blank cheque was issued as security and that their father did not operate the accounts after the year 2000, they cannot deny their involvement or ignorance of the transaction and the business of A.1 firm; that having full knowledge of the issue of the cheque, the petitioners have to defend their case only during trial; that the averments made in their petition to quash the entire proceedings are not proper; that the cheque has been issued on 28.8.2002 when the first petitioner was a major; that for the averments made in para.7 of the affidavit about the unfavourable circumstances under which the petitioners are placed in attending the Court, the respondent would submit that they need not attend all the hearings and they are at liberty to file a petition u/s.317 Cr.P.C. On such grounds, the respondent seeks to dismiss this petition.

5. During arguments, learned counsel appearing on behalf of the petitioners, in his crisp arguments, besides narrating the facts and circumstances of the case in which the petitioners have been impleaded as parties to the proceedings taken out by the respondent under Section 138 of the Negotiable Instruments Act and Section 420 IPC, not only against the first accused firm, but also against its partners, including the petitioners, under the guise that they are also the partners of the first accused firm. In fact, it is an admitted fact on the part of the respondent that the second petitioner is still a minor and the first petitioner, at the time of filing of the complaint, has become a major. Learned counsel would further argue to the effect that under Sections 6(1) and 17 of the Juvenile Justice (Care & Protection of Children) Act, 2000, a bar is created that no Court, much less the trial court, has got any competence to issue summons to minors thereby requiring them to appear before it or any proceeding could be initiated against the minors, and therefore, the proceeding initiated by the respondent against the second petitioner is ruled out, which is a non-existent one in law.

6. Learned counsel would further point out that the first petitioner is a school going girl, and as per the meaning of Section 141(1) of the Negotiable Instruments Act, 1881 (hereinafter referred to as ' the N.I. Act'), the first petitioner also cannot be construed to have been in charge of or responsible for the conduct of the business of the company, and therefore, learned counsel would exhort that both the petitioners are not at all in charge of or responsible to the company for the conduct of the business of the company at the time when the offence was committed and that they have not committed any offence under Section 138 of the N.I. Act and would ultimately pray to allow this petition.

7. Learned counsel would cite a judgment delivered in N. Ranganayakulu v. J.Narasimharao & Co. reported in AIR 1971 Andhra Pradesh 58, wherein it is held therein:

"The question, therefore, is whether under the law governing the rights and obligations of partners vis-a-vis creditors of the firm, a partner is liable to be arrested and detained in prison for the satisfaction of the debts of the firm. Counsel was not able to draw my attention to any provision of the Indian Partnership Act which lends support to his thesis that there is an inhibition on the creditor's rights to seek such remedies as the Civil Procedure Code allows for the realisation of the decretal debt from the partners. Section 25 of the Indian Partnership Act makes it plain that every partner is liable jointly with all the other partners and also severally for all acts of the firm done while he is a partner. Thus, the statute renders the partners liable for all acts of the first and this can only mean that each partner shall be liable as if the debt in question has been incurred on his personal liability. When the provisions of S.25 are considered in juxtaposition with sub-section (3) of Section 30, the legislative intendment underlying section 25 is made all the more clear. sub-section (3) of Section 30 draws a distinction between personal liability and liability limited to the share held by a minor in the firm's assets."
"It is noteworthy that the expression 'personally liable' as

employed in Section 30 is in contradistinction with the liability limited to a partner's assets in the firm. It was faintly suggested that the inference to be drawn is that "personal liability" is conceived of in S.30 as limited to the assets other than the partnership assets and that even in respect of partners (i.e. other than the persons admitted to the benefits of a partnership) personal liability should have the same connotation i.e. the liability to satisfy the debt by the application of his general assets. It is not possible to accept this submission. The suggestion made by the counsel ignores the vital point that in regard to a minor, personal liability could never mean the liability to be arrested for the recovery of a debt. The case of a person admitted to the benefits of a partnership stands apart. The provisions of Section 30 do not furnish any useful analogy. Two decisions of the Supreme Court were cited at the bar; that earlier of the two decisions is Topanpal v. M/s.Kundomal Gangaram, AIR 1960 SC 388. The question primarily dealt with was one of construction of the decree. There was a decree against a firm and assets of the firm in the hands of the partners. A decree personally against the partner, was sought in the plaint. On the consideration of the terms of the decree, all that could be said was that it was ambiguous and a reference to the pleading was, therefore permissible to determine, the effect of the decree. Subbarao J. (as he then was) in speaking for the court held that inasmuch as a personal relief was asked for in the plaint but not granted by the decree, the execution was to be limited to the assets of the firm."
"It is to be noticed that the Supreme Court did not express any opinion against the tenability of personal decree against the partners. If the law does not allow it, the court could not have awarded it and there was no need at all to construe the decree to ascertain whether personal liability of the partners was enforceable. The necessary implication of the decision is that the individual partners may be held personally liable for the satisfaction of the firm's debts. When this premise is valid, and there is no express prohibition of arrest as a mode of execution in the law of partnership, the conclusion that section 51 is attracted is irresistible. Although the question actually decided in that case was whether the execution could be levied against the personal assets of the partners, it is submitted by counsel for respondent that the decision is impliedly an authority for the view that partners are personally liable for the satisfaction of firm's debts. Section 49 of the Indian partnership Act categorically provides for recourse against the personal assets of partners for the satisfaction of firm's debts. When the personal liability is made out, the procedural remedy under Section 51, is an inevitable adjunct to such liability, unless there is a contrary rule of law which governs the jural relationship in respect of such debts. There is no rule or provision of law to the contrary to which my attention was drawn."

8. In reply, learned counsel appearing on behalf of the respondent, referred to Section 30 of the Indian Partnership Act, particularly Section 30(5) and 30(7)(a). Section 30(5) contemplates that at any time within six months of the minor attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, he should give a public notice that he has elected to become or not to become a partner in the firm, and such notice shall determine his position as regards the firm.

Section 30(7)(a) contemplates that where a minor becomes a partner, his rights and liabilities continue up to the date on which he becomes a major, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

9. Learned counsel would point out that the first petitioner, so far as this issue is concerned, falls under these two Sections and therefore, it is not that much easy for clubbing the status of the first petitioner with that of the second petitioner, who is still a minor, and it is upto the first petitioner to clarify that she is not falling within the purview of either Section 30(5) or Section 30(7)(a) of the Indian Partnership Act. Even regarding the second minor petitioner, in the absence of any application filed under the Juvenile Justice (Care & Protection of Children) Act, nothing could be decided at this stage, since the factual matters require evidence to be considered and the matter decided on merits. Learned counsel would exhort that nothing can override the Partnership Act.

10. In reply, learned counsel for the petitioners would ascertain that the Magistrate, who is dealing with the subject, is not having jurisdiction over minors, to entertain even the complaint against or to conduct the proceeding so far as the provisions of the Juvenile Justice (Care & Protection of Children) Act, 2000, are concerned.

11. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, the crucial question that is to be determined in the above petition is whether any proceeding could be initiated against the petitioners under Sections 138 to 142 of the N.I. Act in the Magistrate's Court as it has been done in the case of the petitioners in C.C.No.85

2 of 2002 pending on the file of the Court of Judicial Magistrate No.I, Coimbatore, wherein the petitioners are accused Nos.4 and 5 along with other accused.

12. The case of the petitioners is that at the time of filing of the complaint, much less at the time of the alleged commission of the offence, they were minors and that the second petitioner still continues to be a minor, and therefore, they are definitely entitled to the benefit of the provisions of the Juvenile Justice (Care & Protection of Children) Act, particularly, Section 17 of the said Act, under which any proceeding initiated under Chapter VIII of the Code of Criminal Procedure is not competent against a juvenile and the section reads 'notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, no proceeding shall be instituted and no order shall be passed against the juvenile under Chapter VIII of the said Code'; that under Section 18 of the Act, no joint proceeding of a juvenile could be held nor any juvenile could be charged with or tried for an offence together with a person who is not a juvenile. ... If a juvenile is accused of any offence, committed under Section 223 of the Code of Criminal Procedure or any other law for the time being in force, but for the prohibition contained in sub-section (1), such juvenile and any person who is

not a juvenile, are charged and tried together, the Board taking cognizance of that offence shall direct separate trials of the juvenile and the other person.

13. No doubt need be entertained that within the meaning of the above provisions of law, i.e. Sections 17 and 18 of the Juvenile Justice (Care & Protection of Children) Act, 2000, no juvenile could either be proceeded against in accordance with the procedures established by the Code of Criminal Procedure or have the Courts any competence to conduct any proceeding against the juveniles along with nonjuveniles. The second petitioner, squarely falls under these provisions of law, and therefore, an easy decision could be arrived at that the proceeding initiated against the second petitioner is violative of Sections 17 and 18 of the Juvenile Justice (Care & Protection of Children) Act, 2000.

14. Coming to the case of the first petitioner, since the case is registered under the relevant provisions of the N.I. Act, particularly, under Sections 138 to 142 of the N.I. Act, Section 141(1) is relevant for consideration wherein if the persons committing an offence under Section 138 is a company, every person who, at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. The first petitioner is aged about 19 and is a school going girl and though the liability attributed to her is a continuing liability, right from the time when the parties had transaction, the first petitioner cannot also be reasonably construed to be liable since no valid materials have been placed before this Court in proof of the requirement of the complaint that she was either in charge of or responsible to the company for the conduct of the business of the company, and therefore, she cannot be deemed to be guilty of the offence and is not liable to be proceeded against and punished in accordance with the provisions of the N.I. Act, particularly within the meaning of Section 141(1) of the N.I. Act. Therefore, so far as the above criminal original petition concerned with the commission of the offence by the petitioners in the affairs of the first accused company in the complaint is concerned, no doubt need be entertained that neither of these petitioners has been either in charge of or responsible to the company for the conduct of the business of the company at the time of the alleged commission of the offence, and therefore, this Court has no hesitation to hold that the petitioners are not liable to be prosecuted nor punished in accordance with the provisions of the N.I. Act, much less under Sections 138 to 142 of the said Act, particularly in view of the admitted fact that both the petitioners were minors at the time of the alleged commission of the offence.

In result,

(i) the above criminal original petition succeeds and the same is allowed;
(ii) the proceedings in C.C.No.852 of 2002 on the file of the Court of Judicial Magistrate No.I, Coimbatore, are quashed, insofar as the petitioners are concerned.

(ii) consequently, Crl.M.P.No.96 of 2003 is closed.

Internet:Yes
Index:Yes

gs.